ANNUAL REPORT

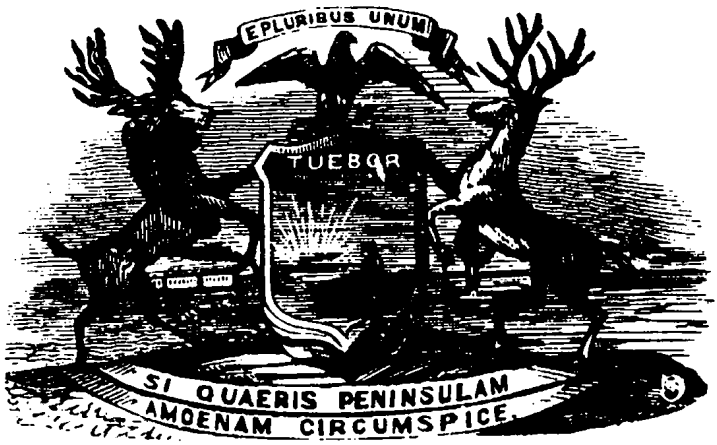
OF THE

ATTORNEY GENERAL

OF THE

STATE OF MICHIGAN,

FOR THE YEAR 1855.



BY AUTHORITY.

LANSING:
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REPORT.

ATTORNEY GENERAL'S OFFICE,
Lansing, January, 1856.

To His Excellency, KINSLEY S. BINGHAM, *Governor:*

SIR,—I respectfully submit my report for the year 1855, as required by act No. 161, of the session laws of 1851.

Not having received the official register of the actions at law prosecuted or defended by my predecessors, I can only report upon such cases pending when I entered upon office, as have causally come to my knowledge.

I found the following cases instituted by my immediate predecessor:

1st. An information in the nature of a *quo warranto* against the River Raisin and Grand River Railroad Company, commenced December 21st, 1854.

The cause of forfeiture, as alleged in the pleadings, is the neglect of the company to commence and build its road as required by the 3d and 4th sections of the charter of April 22d, 1835.

The company have pleaded performance, and also a release from the condition by the State; and as a release they set up the fact that the old Board of Internal Improvement forcibly entered upon and occupied their surveyed route, and located upon it the Southern Railroad.

The case is at issue; and the issue is sent down to be tried by the Circuit Court for the county of Lenawee.

2d. An information against the Bank of Washtenaw, commenced Dec. 21, 1854, for refusing to redeem its circulating notes.

Owing to the difficulty of obtaining due service of process, no issue has as yet been made up in this case.

3d. An information against the *Erie & Kalamazoo Railroad Bank,* commenced at the same time, for refusing to redeem its circulation. Issue is also made up in this case. (For charter see session laws of 1835, p. 145.)

4th. In information against the *Bank of Tecumseh,* commenced at the same time and for the same cause. This case is still pending.

The corporate existence of the bank depends upon that of the *River Raisin & Grand River Railroad Company,* the charter of the latter company simply authorizing its stockholders to "establish a bank at Tecumseh," with the usual banking powers.

The bank has no separate existence; and by the terms of the charter these powers were to cease and become null, unless the stockholders should, by the first Monday in September, 1840, put in operation ten miles of their railroad, which they they failed to do. (For their charter, see session laws 1835, p. 5 of the special session.)

The following cases have arisen since I entered upon office:

In January, 1855, D. Bethune Duffield, Esq., of Detroit, the holder of the circulating bills of the Government Stock Bank at Ann Arbor, to the amount of $2,359.75, applied to the Supreme Court for a *mandamus* against the State Treasurer to compel him to pay the whole amount. The Treasurer's answer to the application showed to the satisfaction of the Court the existence of a large deficiency in the amount of the proceeds of the stock securities sold by his immediate predecessor, to redeem the circulation of the bank, and consequently the Court directed him to pay the relator *pro rata ;* and a preemptory *mandamus* to that effect was ordered.

Feeling it my duty to ascertain so far as practicable, the causes of that deficiency, and to bring the offending parties when discovered to justice, I have used my best efforts to that

end; and on the request of the State Treasurer, addressed to him on the 15th of December last, a letter containing a brief exposition of the facts I had gathered. The letter accompanies his late official report.

I take the liberty to add that the evils inflicted upon the community by the failure of that Bank, and the large deficit in its stock fund, suggests the absolute necessity of the enactment of some further statutory provisions guarding the rights of the creditors of stock banks; carefully defining the duties of the State Treasurer as trustee of the fund, granting him an adequate compensation for his services as such trustee; to be paid by the banks, and making him and his sureties liable to such creditors for any violation of his duties. At present the conditions of his official bond do not embrace the duties imposed upon him as such trustee; and creditors will not, and I think ought not to be content until he and his sureties are made legally liable to them for any violation or neglect of duty by which they suffer loss.

Provisions ought also to be made touching the destruction of the redeemed bills of the stock banks. Certain officers of the banks ought, in conjunction with the State Treasurer or his Deputy, to attest on oath, the actual destruction by fire or otherwise of such bills, whenever stocks are withdrawn upon upon their surrender to the State Treasurer; and severe penalties ought to be enacted against the re-issue of such bills. At present there is no penalty affixed to such a re-issue, a deficit in our penal code which I regard as most serious.

That banks are demanded by the necessities of trade, is a truism. The real interests of commerce require prompt payments, and any delay, whether by banks or individuals, is injurious to that great interest.

While banks are perfectly solvent, able and ready to redeem their liabilities in specie, and honestly and wisely conducted, their paper is the life blood of business, and community respect them; but where these elements are wanting, they are the

scourge of honest men, and are in fact, in a moral point of view, no better than gambling houses.

Perhaps no State has suffered more than Michigan from an irredeemable paper currency. Of the multitude of banks heretofore created by special charters, numbering some forty and scattered over the State, all I believe, with a single exception, turned out to be insolvent, and inflicted heavy losses upon the public; and all the banks, numbering about fifty, organized under the general banking acts of 1837 and 1838, without a single exception, failed and left large amounts of indebtedness unpaid and unprovided for.

The actual losses which the people have sustained in consequence of these numerous and shameful failures, is estimated by millions upon millions; and it ought to impress them with the conviction that the banking interest is entitled to no peculiar favor or encouragement, and with the practical determined purpose not to create or extend it, unless subject to such rigorous rules as will give perfect protection to every honest creditor.

Rather than insolvent paper, better have none. Our laws send to the Penitentiary the man who by *false pretenses* defrauds his neighbor of a shilling. How is it that a banking corporation is less guilty when it issues its evidence of debt to the amount of thousands, to an unsuspecting customer, knowing that it is, or will be, utterly unable to redeem them?

On the 31st of August last, I filed an information in the Supreme Court on the relation of Frederick Fowler and George Underwood, against the individuals who claim to be Directors of the *Hillsdale & Indiana Plank Road Company*, on the grounds that the articles of association of the company are informal and void. The case is still pending.

On the 14st of September last, I filed an information in the same Court on the relation of Charles S. Shepherd against the Battle Creek & Hastings Plank Road Company, for a violation of its charter (the general plank road acts of 1848

and 1853), on the ground that the company had suffered the roads to remain out of repair. This case is also still pending.

Under joint resolution No. 23, passed at the session of 1855, I was instructed to institute proceedings to procure for the State the possession and benefit of lots 1, 3, and 4, of fractional section 25, in town 7 north, of range 12 west, in the city of Grand Rapids (being State building lands), provided I should deem the title of the State valid in law and equity.

In obedience to these resolutions, I have made a careful examination of the title of the State to the lots in question, but have been forced to come to the conclusion that the State has no title whatever thereto in law or equity.

My views upon the whole subject may be found in my report to the Commissioner of the State Land Office, dated the 16th of October last; and a synopsis thereof in my letter to your Excellency, dated the 19th of the same month, expressing the opinion that the State is entitled to receive other lands, from the United States, to make good the deficiency occasioned by the irregular and illegal selection of that tract as a part of the State building lands, granted to the State by the act of Congress of 23 June, 1836, for the admission of this State into the Union.

I understand that the Secretary of the Interior concedes this claim for indemnity.

Under the act No. 88, of the last session, I have co-operated with the Commissioner of the State Land Office, in examining the title of, and appraising the lands belonging to the State, in Jackson; and the appraisal has been duly filed with the Commissioner.

Under the act No. 130 of the same session, I have examined the title of the lands purchased by the State for an Agricultural School. Having found said lands unincumbered, and the conveyances thereof executed in due form, I so certified, as required by the act.

I have not been able to make the investigations required of

me by joint resolution No. 9, of the last session, instructing me, without providing any compensation for such extra labor, to make inquiry into the manner in which certain lands appropriated under Acts numbered 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, and 295, approved April 3d, 1848, have been applied.

Those twelve statutes appropriate 63,000 acres of internal improvement lands, out of the 500,000 acres granted to the State for purposes of internal improvement, by the act of Congress of 4th of September, 1841, for the following objects, viz.: Improving the road between Jackson and Lansing; making a wagon road from the county of St. Clair, through Lapeer, Genesee, and Shiawassee to Corunna.

Improving roads in the county of Branch; ditto in the county of Hillsdale; constructing road from Livingston, St. Clair county, to Rogers's Mill, Lapeer county.

Constructing road from Albion to Eaton Rapids.

Improvement of road from Mason to Dexter; to the county of Lenawee, for draining swamps and constructing bridges.

For a free bridge across Clinton river, at Pontiac; for rebuilding a draw bridge across the river Rouge, in Greenfield, Wayne county.

For opening and improving a road from Metamora to the Holland Colony in Tuscola county, and building a free bridge across the Cass river at Hurd's Mill; for constructing bridges in the county of Kent; and for incidental expenses for all these works.

The allowance of the Board of State Auditors in December, 1854, of the sum of $35,603.74, to the Phœnix Bank of the City of New York, in payment of a pretended claim of that bank against the State, arising as long ago as 1838, created much surprise, and I have felt it my duty to examine the matter.

The facts of the case are briefly and simply these:

On the 13th day of March, 1838, Mr. John Norton, the

Cashier of the Michigan State Bank, was in New York, and for the benefit of that bank *borrowed* of the Phœnix Bank (the predecessor and assignor of the present Phœnix), two drafts, one on the Farmers and Mechanics' Bank, Detroit, for $8,500, and the other on the Bank of the River Raisin, at Monroe, for $7,900; amounting together to the sum of $16,400.

These drafts were delivered to Norton in a letter, or rather on account stated in which they were charged to be "*on account of advance made by this bank on Michigan bonds, deposited with John Delafield, President.* Delafield had no authority to make such an advance to the State. The State never requested it. Norton gave for them his receipt as *cashier.* He had no authority to bind the State, or to borrow money for it; did not in fact attempt to do so, and never applied the drafts, or either of them, or the proceeds, to the account of the State.

The draft on the Farmers and Mechanics' Bank for $8,500, he brought to Detroit, collected it soon after its date, and credited the Phœnix Bank with the amount.

That on the Bank of the River Raisin, he seems never to have presented for payment; and on the 26th day of March, 1840, the Phœnix Bank, by a letter, now in my possession, addressed to the *cashier* of the Bank of the River Raisin, actually *countermanded* its payment. Norton is dead, and I am unable to find the draft.

In the summer of 1840, the Phœnix Bank, by letter, fully authorized a gentleman residing at Detroit to settle, as their agent and attorney, both branches of this claim. On the 23d day of September, 1840, he accepted from the Bank of the River Raisin certain assets and personal property amounting to $8,510.15, in full payment of all the indebtedness of that bank to the Phœnix Bank, being the fund, with interest, against which the countermanded draft for $7,900 was drawn.

On the 2d day of October, 1840, their said attorney accepted

from the State Bank a deed of 2,397 40-100 acres of land lying in Saginaw county, and sundry other assets and cash, amounting in all to $9,155.53, in *full discharge of the said draft for $8,500 and interest*, and gave full and explicit receipts to each bank, which receipts are in my possession.

Thus in the months of September and October, 1840, the two banks actually paid and satisfied to the Phœnix Bank the amount of both the drafts.

The old Phœnix Bank expired January 1st, 1854, but the present Phœnix Bank, organized under the general banking law of New York, comprises the most of the former stockholders and officers, and has the possession, as assignee or vendee, of all the assets and books of the old bank.

And yet the new bank had presented this claim, consisting of both said drafts, to the Board of State Auditors, in May, 1854, and urged its payment by the State, while it had in its possession the property so turned out in payment by the two banks, and full knowledge of the previous settlement.

The Board, without consulting the Attorney General, and without any "competent testimony," but only on *ex-parte* and *extra judicial* affidavits, which when carefully scanned did not of themselve prove any legal liability on the part of the State, allowed the whole claim, consisting of both the said drafts, and interest from 13th March, 1838, and amounting to $35,603.74, which amount was paid out of the treasury to the present Phœnix bank or its agents.

In May last I visited New York city, and called upon the officers of the bank for re-payment of the amount, but under vurious pretexts it was refused; and in August last commenced a suit against the Phœnix Bank, in the name of the State, in the New York Superior Court, for the purpose of recovering the money, on the ground that the bank was fully aware, at the time of the presentment and allowance of the claim, that it had been paid, and that it fraudulently suppressed and concealed from the board of State Auditors the fact that it had

been so paid, and other material evidence; that the State authorities were not then aware of the payment, and had no opportunity to avail itself of the real defense.

After a careful investigation of this matter, I am compelled to say that on the part of the Phœnix Bank, the fraud is a gross one. J. L. Jernigan, Esq., of New York city, an able and faithful counselor, has charge of the suit on the part of the State.

I append an abstract of the reports of the several Prosecuting Attorneys, though none have been received from the Upper Peninsula.

Their talents and assiduity in enforcing the penal code are worthy of great praise.

I doubt whether in these respects, they are excelled by any similar corps in the Union. No one of our sister States can boast of a more vigilant and effective execution of its internal police, than our own. Whatever may be due to the quiet and law abiding character of our people, all must admit that the high responsibility of preserving law and order, rests in a great degree upon the talent and fidelity of the local Prosecuting Attorneys.

An examination of these reports shows that the amount of criminal business transacted in the county of Wayne alone, is nearly equal to that of all the other counties of the State.

The number of indictments presented in the Circuit Court for that county during the past year was 315; the number of criminal trials, 94; the number of persons sentenced to State prison, 52; aggregate term of their sentences, 195 years, and the number of criminal cases still standing for trial, 96.

That this immense mass of criminal cases, comprising charges of every description of offense, and requiring on the trial of each, on the part of the court, the most careful attention to the rights of the public as well as of the accused, is a serious obstruction to the civil business of the court, and the interests of private suitors, is obvious to all.

And that such an accumulation of public prosecutions must necessarily add greatly to the expenses of the county, arising from the confinement of prisoners awaiting trial, is equally evident. And when it is considered that probably three-fourths of them arise in the city of Detroit, the question presents itself whether something cannot be done by way of legislation, to relieve the county and the Circuit Court of some part of this burthen.

The Constitution (Art. 6, Sec. 1,) provides that "municipal courts of civil and criminal jurisdiction, may be established by the Legislature in cities." The organization of such a court in Detroit, with power to try all criminal offenses arising in the city, not falling within the jurisdiction of the Mayor's Court, the Police Court, or Justices of the Peace, and reserving to the Circuit Court its civil jurisdiction as at present existing, and also its criminal jurisdiction, except to try offenses committed within the limits of the city; reserving to it also, the power to summon a grand jury, to enquire for the whole county, as at present, but requiring it to send all indictments for offenses committed in the city, to the new court for trial, would in my opinion, be a great public benefit, tending to the prevention and speedy punishment of crime, and the reduction of the county expenses. Whether this be not a subject worthy to be called to the attention of the Legislature, is for your Excellency to judge. From a careful observation of the working of the present system, I am fully convinced that the administration of justice requires some such modification. The details will, of course, be for the Legislature.

I have the honor to be respectfully,

Your obedient servant,

J. M. HOWARD,

Attorney General.